
FINAL RECOMMENDATIONS FOR THE ACUPUNCTURE BOARD

Recommendations of the Department of Consumer Affairs and the Joint Sunset Review Committee

ISSUE #1. (CONTINUE REGULATION OF THE PROFESSION AND THE EXISTENCE OF THE BOARD?) Should the licensing and regulation of acupuncturists be continued, and the profession be regulated by an independent board rather than by a bureau under the Department?

Recommendation #1: *Continue regulation of the profession by the Board and review the Board again in two years.*

Comments: Continued regulation of the practice of acupuncture is necessary, given the direct patient care performed by acupuncturists. Acupuncturists diagnose, administer treatment, and prescribe various treatments and herbs to promote patient health. Consumers rely upon the licensing process to ensure that acupuncturists are properly trained and competent to provide care.

The Acupuncture Board should be continued as the entity responsible for regulation of acupuncturists; however, the Department concurs with the Joint Committee's preliminary recommendation that the Board be reviewed again in two years. This limited sunset review cycle would permit the Joint Committee and the Department to have increased oversight of the Board's efforts to remedy problems identified in this sunset review cycle.

ISSUE #2. (CHANGE BOARD COMPOSITION?) The Board does not have a faculty member appointee.

Recommendation #2: *Require one Board member to be on the faculty of a California acupuncture school.*

Comments: The Department concurs with the Joint Committee's preliminary recommendation that Business and Professions Code Section 4929 should be amended to require that one of the licensee members shall be a member of the faculty of a California Acupuncture School. The Board's evaluation of acupuncture schools and curriculum would be enhanced by the expertise contributed by a faculty member.

ISSUE #3: (HOW MANY MEMBERS OF THE BOARD SHOULD CONSTITUTE A QUORUM?) The law provides that a majority of the appointed members of the Board shall constitute a quorum.

Recommendation #3: *Five members of the Board should constitute a quorum.*

Comments: The Department concurs with the Joint Committee's preliminary recommendation that Business and Professions Code Section 4933 (c) should be amended to require that five members of the Board constitute a quorum for the transaction of business at any meeting. The current requirement that a majority of the appointed members of the Board shall constitute a quorum to conduct business is consistent with the policy of other regulatory boards within the Department.

ISSUE #4. (MAINTAIN THE CURRENT NAME OF THE BOARD?) The Board supports a name change to the "California Board of Acupuncture and Oriental Medicine," stating that acupuncture is one modality within the whole practice and philosophy of Oriental medicine.

Recommendation #4: *Maintain the current name of the Board.*

Comments: The Department is not inclined to support suggestions that the Board name be changed. In our view, changing the name of the Board to the "California Board of Acupuncture and Oriental Medicine" is likely to confuse and mislead consumers. Currently, the Board does not issue licenses solely for practitioners of oriental medicine, nor does it exercise separate enforcement authority over that aspect of the practice. Additionally, the practice of "oriental medicine" is not defined specifically in the statute and is not a licensed profession separate and removed from acupuncture. Consequently, the proposed name change is premature. The Board should not change its name until such time as a profession of Oriental Medicine is defined in statute, and the Board's authority to regulate and enforce the conduct of such practice is clear.

ISSUE #5. (MAXIMIZE USE OF THE INTERNET?) Is the Board utilizing Internet capabilities to improve services and provide better information to consumers and licensees?

Recommendation #5: *All Board reports, newsletters and brochures should be available on the Board's website.*

Comments: To facilitate dissemination of information to Board licensees and the general public, the Board should post all reports, including the Board's annual report to the Legislature, on its web page. Additionally, the Board's newsletter and informational brochures should also be available on-line.

ISSUE #6. (CONTINUE TO CONTRACT OUT EXAM ADMINISTRATION?) The licensing examination is administered by a private company, the cooperative personnel services (CPS).

Recommendation #6: *Continue to contract out exam administration to an independent consultant.*

Comments: Due to the Board's historical problems with development and administration of the licensing exam, the requirement that the Board contract with an independent consultant for exam administration should be reinstated.

ISSUE #7. (SHOULD ADDITIONAL COURSEWORK BE REQUIRED OF AN APPLICANT WHO FAILS THE EXAM?) The Board is proposing the adoption of legislation that would require an applicant who fails the examination after three attempts to complete additional education before they can sit for the exam.

Recommendation #7: *Additional coursework should not be required of applicants who fail the exam.*

Comments: Applicants should be permitted to continue to sit for the examination, even after failed attempts, without being required to sit for additional coursework or continuing education. It is up to the applicant to pursue supplementary education needed for passage of the examination. As long as applicants meet the educational requirements and pay the fee to sit for the examination, they should be allowed to continue to take the exam, as many times as necessary.

ISSUE #8. (SUBJECT ACUPUNCTURISTS TO THE PROFESSIONAL REPORTING LAWS?) Unlike most health boards and health care licensees, neither the Board nor their licensees are subject to the professional reporting laws (Section 800 et seq. of the Business and Professions Code).

Recommendation #8: *Acupuncturists should be subject to professional reporting laws.*

Comments: The Department concurs with the Joint Committee's preliminary recommendation. Like other health care professionals licensed in California, acupuncturists should be subject to professional reporting laws (Section 800 of the Business and Professions Code).

ISSUE #9. (FURTHER STUDY NEEDED TO DETERMINE EDUCATIONAL STANDARDS AND SCOPE OF PRACTICE?) The Board appears to be proposing to increase the education requirement for the practice of acupuncture and oriental medicine. The Board is proposing to change the law so that acupuncturists can diagnose within the scope of their practice.

Recommendation #9: *Further study of the profession by an independent consultant is needed to determine educational requirements and scope of practice.*

Comments: There is much debate within the acupuncture profession surrounding the level of education that is needed for acupuncturists to practice effectively, and the scope of practice which determines exactly what tasks they may or may not perform. The Board has acknowledged this debate by establishing the Task Force on Competencies and Outcomes.

The Department concurs with the Joint Committee's preliminary recommendation that the scope of practice for acupuncturists needs to be clarified and codified in statute.

To resolve this debate, the Department recommends an independent consultant be retained by the Department, with funding provided by the Board, to assess the educational needs of practitioners and the scope of practice of acupuncturists. As the practice of acupuncture evolves, it may be necessary to make changes to the practice act in order to reflect contemporary health care. To prepare for these changes, this independent health care consultant working with the Department should assess the practice and report to the Board, the Department, and the Joint Committee prior to the Board's next sunset review.

ISSUE #10. (EVALUATE NATIONAL EXAMINATION?) The last time the Board was reviewed, the Joint Committee Recommended that the Board should continue evaluating the National Examination, given the time, effort and cost involved in providing the Board examination.

Recommendation #10: *The national examination should be evaluated.*

Comments: The Board should evaluate the national examination, administered by the National Certification Commission for Acupuncture and Oriental Medicine, and determine whether or not the national examination should be offered in California in lieu of or as part of the state examination. To assess the scope of the national exam and its relevance to the practice in California, the Department's Office of Educational Resources (OER) should conduct or oversee a comparative analysis of the national examination.

ISSUE #11. (INVESTIGATE THE EXTENT OF THE USE OF UNLICENSED ACUPUNCTURE ASSISTANTS?) Are "Assistants" being used by licensed acupuncturists to perform activities that could be considered engaging in the practice of acupuncture?

Recommendation #11: *Investigate the use of unlicensed acupuncture assistants.*

Comments: The Board and the Joint Committee have expressed concerns about the use of unregulated, unlicensed acupuncture assistants. The Board should actively investigate whether licensees are utilizing assistants. If the Board determines that this is a common yet unregulated practice, the Board should examine the need for licensure of these assistants and return to the Joint Committee in two years with a report on the frequency of the practice and the potential need for a new licensure category.

ADDITIONAL JOINT COMMITTEE RECOMMENDATIONS

ISSUE #12. (THE BOARD FEELS THAT EXEMPTED HEALTH PRACTITIONERS ARE A RISK TO CONSUMERS.) Under certain instances, other licensed health practitioners, such as physicians, podiatrists and dentists may also practice acupuncture.

Recommendation #12: *The Joint Committee recommends that the Board examine ways to ensure consumers are not harmed by exempted practitioners and report the results to the Committee at the next review.*

Comments: The Board feels that the 200-300 hour course in Oriental medicine often taken by an allopathic doctor, podiatrist or dentist is totally inadequate. The Board feels that proper, adequate and complete program training in Oriental medicine diagnosis is essential to ensure safe and effective acupuncture treatment.

ISSUE #13. (CHANGE THE BOARD'S CONTINUING EDUCATION PROGRAM?) Are changes needed to the Board's continuing medical education (CE) program? It is unclear whether the Board uses their authority to audit licensees to ensure compliance with the continuing education requirements. The Board has authorized licensees to complete up to 50% of their continuing education requirements on an independent or home study basis.

Recommendation #13: *The Board should study ways to improve the frequency and consistency of their auditing and the quality and relevance of their courses. The Board should provide the results of its study of the CE program and make recommendations on any changes that are necessary to improve the overall quality of the program at the next review.*

Comments: Acupuncturists are required to complete 30 hours of continuing education every two years as a condition for renewal their licenses. The Board is authorized to audit, once each year, a random sample of acupuncturists who have reported compliance with the continuing education requirement. However, the frequency and consistency of the Board's auditing and the quality and relevance of Board approved course continues to be a concern to the Joint Committee.

ISSUE #14. (EXAMINE THE BOARD'S SCHOOL APPROVAL PROCESS?) The last time the Board was reviewed, the Joint Committee concurred with the Board that the Bureau of Private Postsecondary and Vocational Education (BPPVE), or similar approval for schools outside California, should be a prerequisite for Board approval of schools.

Recommendation #14: *The Board should examine the pros and cons of the approval process of the Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM), the approval process of BPPVE, and its own approval process. The Board should provide results*

of its study and make recommendations on any changes that are necessary to improve the overall quality of the process at the next review.

Comments: The Board continues to look at this issue without resolution. In their current report to the Joint Committee, the Board states that they have not focused on the acupuncture school approval process since the time of the last reporting, due to limited resources. However, the Board's report does state that beginning fiscal year 2000/2001, their Educational Committee commenced focusing on this issue. The Committee has held public meetings to review the application and review processes for the BPPVE, and the ACAOM. The Board is also reviewing its current school approval process, and the program's policies and regulations to determine if they are adequately defined.